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Plaintiff in ProPer

2012 SEP 24 AM 10:50

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Joseph A. Guerra,
Plaintiff,

vs.

JUST MORTGAGE, INC.; CHASE HOME
FINANCE, LLC; MERS and
DOES 1-10,
Defendants.

Case No.:2:10-cv-00029-KJD-RJJ

**RESPONSE TO OPPOSITION OF
DEFENDANTS CHASE/MERS TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION OF
ORDER (DOC#105)**

This Response is supported by the following:

MEMORANDUM OF POINTS AND AUTHORITIES

(1). To all appearances as far as the Plaintiff can see is that Chase's attorney had made judicial determinations for the Court such as the Plaintiff is not allowed to defend himself in that he cannot have Freedom to Express his opinion in this Court. At least the Plaintiff rehashes his Objections honestly versus attorney, Katie Weber where she rehashes her words with lies many times.

(2). Although Ms. Weber defended Magistrate Judge's ruling and offensive behavior, I don't really care to hear her opinions and observation in court or in writing because what she projects is a weak argument in her own persona non grata. I'll say this, in everyones opinion that has seen the Magistrate Judge preside over my case say he definitely demonstrates bias and misconduct

1 toward the Plaintiff. Particularly, the time when the Magistrate
2 Judge tried to convince and trick me into transferring my case
3 from his jurisdiction to a State District Court during the March
4 2010 Hearing. At that time, he knew very well that the State
5 District Court was not the proper jurisdiction Court for a RESPA
6 (12 U.S.C. 2605) lawsuit. Immediately after I refused to accept
7 his advise, the Magistrate Judge then told me that my house
8 would be foreclosed on within six (6) months. To me, this was
9 inappropriate and was very surprised to hear such a comment
10 because the Magistrate Judge did not even read my First Ammended
11 Complaint submitted to him at that time. At this time, let it be
12 known that there were twelve (12) other people present in Court
13 and all told me that the Magistrate Judge definitely had Bias
14 towards me. The following week, after the March 2010 Hearing, I
15 did consult with an attorney and paid him quite a lot of money
16 for retainer fees and unfortunately low and behold, he found out
17 Magistrate Judge Johnston was one of the two (2) Judges' who
18 will be presiding over my case, and then refused to represent me
19 and kept the money.

20 (3). On 07/13/2011, the Plaintiff submitted a Motion To
21 Compel Chase to Answer the QWR and VDL and to submit the
22 Production of Documents (See Doc.#68). And, on 09/07/2011
23 (Doc.#75), Magistrate Judge Johnston entered an Order denying
24 the Plaintiff's Motion. The Plaintiff attempted at least five
25 (5) times through normal Discovery communication both to Chase
26 and Chase's attorney's office to request information and totally
27 disregarded my requests. Based on Nevada Revised Statutes NRS
28 104-3501 Subsection 2(B), the Plaintiff has the right to find

1 out whether Chase is the True Holder in due course and Owner of
2 the alleged Notes. Because of Chase not cooperating with
3 Plaintiff, I was not able to obtain the correct legal
4 information needed that would have most likely closed this case.
5 Instead, seems like attorney, Katie Weber wants to prolong this
6 case as long as she can in order for her to charge more money
7 towards her client, and to have this Courts backlog of scheduled
8 cases still on the books. In addition, Plaintiff was unable to
9 get legally correct Audit Reports because he couldn't supply
10 informative data to the Research Firms to generate these Audit
11 Reports that would have been useful towards my Loan data.

12 (4). I also might add, a reasonable person besides
13 attorney, Katie Weber would be justified in considering that any
14 one of the above behaviors demonstrated, standing alone would
15 call into question Magistrate Judge's ability to be completely
16 dispassionate and impartial in his conduct of this case.
17 However, it should be noted, that even if none of them - in and
18 of themselves would warrant a reasonable person in questioning
19 the Magistrate Judge's ability to be impartial because there are
20 a great many situations known to the law - in which facts,
21 though deemed to be insignificant separately, have been found to
22 be compelling in combination. See, e.g., *Obert v.*
23 *Repub.W.Ins.Co.*, 398 F.3d 138, 145 (1st. Cir. 2005). ("sometimes
24 a multiplicity of small grounds will persuade even though each
25 alone is weak or insufficient").

26 Independent of any other criteria - is to question whether
27 the Magistrate Judge is capable of continuing to preside over
28 this case with the requisite degree of impartiality.

(5). The Court can place Sanctions on the Plaintiff based on Fed.R.Civ.P. 16(b) and Rule 37. However, in order to impose such a severe sanction ordered by Magistrate Judge Johnston (Doc.#105), the District Court must make a finding of willful or bad faith failure to comply first. MALAUTCA v. SUZUKI MOTOR CO., Ltd., 987 F.2d 1536, 1542 (11th Cir. 1993). The District Court must also find that lesser sanctions are not sufficient for punishment. Cohen v. Carnival Cruise Lines, Inc., 782 F.2d 923, 925 (11th Cir. 1986).

Using the Constitutional Articles as a major Guide, along with the Magistrate Judge's Oath of Office, and Canons of Judicial Code of Conduct there are case laws where both Appellate Courts and the Supreme Court did hold Judges accountable when their knowing and willing actions fell outside the boundries of their job description. That failure to follow simple guidelines of their post makes a Magistrate Judge's action no longer a judicial act but an individual act as the act represents their own prejudice and goals. (See Under the Federal Civil Rights Law - Title 42 U.S. Code § 1983).

(6). Finally, 28 U.S.C. § 636(c)(4) and Federal Rule of Civil Procedure 73(b)(3), authorize the District Judge, for good cause shown or on the Judge's own Motion, or under any extraordinary circumstances shown by any party, to vacate a reference of a civil matter to a Magistrate Judge. Although not a mechanism for an Appeal as such, this seldom - used section can wrest a case from impartiality from the hands of a Magistrate Judge.

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CONCLUSION

Defendant Chase/MERS's Objection is baseless and not well ground in fact and based on attorney, Weber's own subjective frivolousness standard, because her allegations lacked of reasonable and competent case laws.

The Magistrate Judge's ruling Order (Doc.#105) imposed Sanctions on Plaintiff contains clear errors in both law and fact because no evidentiary support and no written code of law were mentioned.

Rule 60(c) - Other Remedies. This Rule does not limit the power of a Court to entertain an independent action to retrieve a party from an Order, Judgement, Misconduct or Proceeding.

Wherefore, Plaintiff requests this Honorable Court to make review on the Magistrate Judge's decision based on the proper standard.

Respectfully submitted,


UCC 1-308

Joseph A. Guerra
Plaintiff in Pro Per

September 24, 2012
Date


CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2012, I mailed a copy of this **RESPONSE TO OPPOSITION OF DEFENDANTS CHASE/MERS TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER (DOC.#105)** to the following parties by First Class Mail:

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Beata H.